

Corruption and the smuggling of refugees

October 2015

Global forced displacement of people due to conflict, persecution, violence and human rights violations is on the rise. The current refugee crisis has resulted in the displacement of an unprecedented number of people. The United Nations estimates that more people have been displaced in the last two years than at any time since World War II. With record-breaking numbers of displaced people seeking passage to safe refuge, refugee smuggling has become a more lucrative and sinister operation than ever before.

The influx of refugees to European borders regularly leads to tragedies that can be directly linked to people smuggling. In October 2013, more than 300 people drowned off the coast of Lampedusa. In the same month, 92 people died crossing the Sahara Desert near the Libyan border. In August 2015, 70 people suffocated in the back of a truck in Austria. International responses thus far have been inadequate. In the absence of an immediate and unified global strategy to address this humanitarian crisis,¹ the business of people smuggling will only continue to grow.

Corruption is one of the primary facilitators of refugee smuggling. In order to fight this crime, and help refugees safely realise their rights, the international community must understand the intricate connections between corruption and refugee smuggling.

¹ OECD Migration Policy Debates, No. 7, September 2015.



The rights of refugees under international law

Refugees and other displaced people have rights under customary international law and a number of international conventions. The primary legal instrument describing the rights of refugees and state obligations in this regard is the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

The 1951 Convention stipulates that, subject to specific exceptions, refugees should not be penalised for their illegal entry or stay. This principle recognises that the seeking of asylum can require refugees to breach immigration rules. To leave their home country (or the host country where a refugee camp is located), or to enter a destination country, refugees often need to resort to extralegal measures.



Who is a refugee?

The UNCHR defines a refugee as

“A person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution (see Article 1A(2)). People who fulfill this definition are entitled to the rights and bound by the duties contained in the 1951 Convention.”

www.unhcr.org

Human smuggling – a serious and growing criminal activity

Human smuggling and trafficking are two of the fastest growing transnational criminal activities and one of the most lucrative forms of organised crime, second only to the drug trade.² Although distinct offences, they both often involve a number of other crimes, including exploitation, coercion, extortion, fraud, bribery and human rights abuses, such as debt bondage, deprivation of liberty, and restrictions on freedom of movement and labour.

While there are significant differences between trafficking in persons and human smuggling, they both frequently arise from similar circumstances, namely extreme poverty, lack of economic opportunities, civil unrest, and political uncertainty. The criminal elements that engage in one often also engage in the other. Further, smuggled persons may become victims as well. In addition to being subjected to unsafe conditions *en route*, smuggled people may be subjected to physical and sexual violence or extortion. They may be held hostage until their debt is paid off. Moreover, a person being smuggled may at any point become a trafficking victim.

Human smuggling may be further distinguished according to the type of person seeking to illegally cross an international border. The term migrant smuggling refers to any form of assisted illegal immigration – to escape war, political persecution or natural disaster, or to obtain better economic opportunities – circumstances that can make emigration extremely difficult or even impossible. Refugee smuggling relates specifically to a class of migrants who are eligible for protection under international law. Due to exigent conditions, they may have to resort to extra-legal measures to obtain such protection. For instance, national policies that require refugees to physically arrive within a country's borders to be granted legal protection complicate the asylum seeking-process and fuel the black market for human smuggling. However, the distinction is important in principle only – the actual smuggling of refugees is no different from the smuggling of other migrants (save for certain specific circumstances, such as departure from refugee camps).

Human smuggling as a security threat

In addition to the very real toll human smuggling takes on lives, this trade also has significant security implications.

Illicit money flows from human smuggling may be used to finance terrorist activity. In light of increased counter terrorism-financing measures, terrorist groups are increasingly turning to organised crime, including human trafficking and smuggling, as a source of funding. This trend has been flagged by several national administrations as a growing area of concern.³

Terrorist groups also use smuggling channels to physically relocate themselves. They have reportedly taken advantage of the disorder created by the recent humanitarian crisis to smuggle their members into Europe.



Trafficking vs smuggling

Both human smuggling and human trafficking generally involve the movement and delivery of people from a source location to a destination. The primary distinction between the two lies with the presence or absence of consent.

HUMAN SMUGGLING is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries laws, either clandestinely or through deception, such as the use of fraudulent documents. The relationship between the migrant and the smuggler is consensual.

HUMAN TRAFFICKING specifically targets the trafficked person as an object of criminal exploitation. The purpose from the beginning of the trafficking enterprise is to profit from the exploitation of the victim. The relationship between the victim and the trafficker is not consensual, and usually based on fraud, coercion or force. Unlike human smuggling, human trafficking does not require the crossing of an international border (although it often does have a transnational aspect).

² *Human Smuggling and Trafficking into Europe: A Comparative Perspective*, Migration Policy Institute (February 2014), citing UN Drug Report (UNODC 2007).

³ See e.g. in "International Jihadist Networks are a Threat to Portugal: Report," Agence France-Presse, 30 March 2006; see also Arslan, Gökçe, "Migrant Smuggling: the Impact of the Turkish Highway to Europe", Reuters (2013). Australia's Foreign Affairs Minister Julie Bishop has also stated that "[d]estroying the people-smuggling trade remains a 'national security priority' for Australia because it is being used globally to fund terrorism" (Julie Bishop: Smashing people smuggling the priority due to terrorism links, *The Spring Morning Herald*, 23 May 2015).

Corruption in refugee smuggling

Corruption is a key facilitator of human smuggling offences. It is a major impediment to the prevention, detection and control of human smuggling. As with most transnational criminal activities, refugee smuggling flourishes where rule of law is weak and public officials are prone to corruption. Law enforcement, border protection and immigration control activities can be circumvented by the complicity of corrupt officials along every step of the passage from the point of origin to the destination.

There are a number of stages in the smuggling process in which corruption in general, and bribery in particular, occurs. Due to the international nature of human smuggling, smugglers must pay bribes to both national as well as foreign public officials over the entire course of the transit route. Officials must be paid off at entry and exit points, as well as to obtain or overlook documentation, such as in the form of visas and permits, or to waive controls or regulations.

In the world of human smuggling, bribery pays

In many transit and destination countries where public officials are poorly remunerated, accepting bribes to be complicit in smuggling schemes is a type of rent, or extra income. Refugees and illegal migrants thus can represent a significant source of additional income for border protection and immigration control officials.

Illegal human movements lead to illicit financial flows

Human smuggling is a highly profitable business. While evidence on profits obtained by smuggling individuals and networks is difficult to find, isolated cases show that the gains are substantial. In January 2015, for example, the cargo vessel *Ezadeen*, intercepted by Frontex in its Joint Operation Triton, with 360 migrants on board purportedly earned smugglers USD 2.79 million.⁴ Prices charged by human smugglers can range from hundreds of dollars to the tens and even hundreds of thousands.⁵ The estimated human smuggling profit in the United States alone for 2008 was USD 2.16 billion.⁶ Some estimates place the figure of global profits from smuggling to be in the ballpark of USD 26 billion per year.⁷

Opportunities for bribery

- To exit refugee camps, guards and security personnel are often bribed.
- Corruption in the issuance of falsified or fraudulent identity or travel documents may require bribing the relevant public administration in charge, or bribery may be required to facilitate the use of such fraudulent documents (e.g. by lack of scrutiny).
- Documentation fraud may involve the purchase of passports and visas through corrupt officials in embassies.
- Another common scheme is 'visa smuggling', often involving the creation of fictitious companies to sponsor an illegal immigrant.
- 'Approved destination status' allows for multiple people to enter using one legitimate visa.
- Bribery of customs officials, immigration officers or border police at border crossings of transit and destination countries is usually necessary, even with falsified documentation.
- Bribery of transportation officials who stop vehicles to inspect cargo will be required to avoid detection or to pass check-points.
- Corruption in the form of bribery or coercion can induce or intimidate law enforcement officials to look the other way (and not open investigations or initiate prosecutions).
- Corruption in the form of bribery or coercion can induce or intimidate members of the judiciary to not convict smugglers or other participants of the illicit scheme.
- Immigration officials may be bribed to fail to implement a deportation order.
- Officials may also be bribed to facilitate the illegal housing and employment of immigrants upon arrival.

⁴ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Action Plan against Migrant Smuggling (2015–2020)* (converted from EUR 2,5 million).

⁵ See Koser, Khalid, "Why Migrant Smuggling Pays" (2008).

⁶ See Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants, FATF report, July 2011, para. 52.

⁷ The billion-dollar business of refugee smuggling, *Al Jazeera*, 15 September 2015.

An empirical study following 50 illegal immigrants smuggled to the United Kingdom from Afghanistan and Pakistan found that, on average, smugglers' fees amounted to 262% of a household's annual income.⁸ The lowest ratio of fee to household income was 67% and the highest was over ten times the household's annual income. An example of the sequence of payments (and average costs) necessary for arranging a flight leaving the host country (in this case Pakistan) can be seen in the table below.

The study found that among the households studied, payments were broadly similar in that they were usually made in full in advance of the migration (the main variation being whether payment was transmitted in one lump sum or in instalments over time). Respondents explained that payments in advance were always made to a third party (such as a *hawala*, or money changer) who would essentially hold the money in escrow (and disburse funds as needed), rather than pay the smuggler directly. The balance would be released to the smuggler at the end upon confirmation by the migrant's family of safe arrival.

Because the criminal scheme generates most of its proceeds in cash, payments often need to be sent abroad to be "cleaned". As such, money laundering plays a crucial role in the concealment of proceeds, although detection of human smuggling through suspicious transaction reports (STRs) made to Financial Intelligence Units (FIUs) represents only a small minority of cases brought to the attention of law enforcement officials. The Financial Action Task Force (FATF) reports that, compared to other serious offences, the number of STRs relating to smuggling is very low.⁹



Human smuggling doesn't just take place in the black market

Perfectly legitimate businesses are often also involved (either wittingly or unwittingly). Employees of private transportation companies may permit undocumented migrants to stow away as passengers on passenger or cargo ships, ship containers or airliners. In some instances, the business simply may be negligent, for instance in the case of a private travel agency issuing cash purchase airline tickets without verifying the purchaser's identity.

Further, a private employer may misappropriate all or part of the wages earned by irregular migrants, claiming exaggerated or non-existent expenses. The employer may use the threat of exposure or deportation to extract funds from such migrants, sometimes in collusion with immigration or law enforcement officials, and illegal migrants have no legal recourse to address these wrongs.

⁸ See *id.*

⁹ See note 5

Table 1. The disbursement of payments (USD) for a flight from Pakistan to the United Kingdom

Actors	Amount	Description	Balance
Potential migrant pays full amount to a third party	Up to USD 14,000	The third party issues a receipt. He holds the money until it is confirmed that the migrant has arrived. The money is then handed over to the smuggler.	USD 14,000
The smuggler obtains a passport and/or visa for the potential migrant from an intermediary	USD 2,000	Costs vary according to the nationality and quality of the passport/visa.	USD 12,000
The smuggler pays one member of the airline check-in desk staff to issue a boarding pass without closely inspecting the passport	USD 1,000	The amount paid depends on how reliable the passport is.	USD 11,000
The smuggler pays one member of the airline staff responsible for checking passports immediately prior to boarding not to scrutinise the passport	USD 1,000	The amount paid depends on how reliable the passport is.	USD 10,000
The smuggler pays members of Pakistani immigration not to scrutinise the passport	USD 3,000	The amount paid depends on how reliable the passport is.	USD 7,000

Source: Koser, Khalid, "Why Migrant Smuggling Pays" (2008)

A global problem requires a global response

The Smuggling of Migrants Protocol¹⁰ identifies several measures that can be taken to prevent refugee smuggling, including border control, information exchange between jurisdictions, measures to ensure the security and control of documents, and public awareness campaigns. However, the covert and corrupt nature of refugee smuggling undermines many of the international best efforts made to reduce this phenomenon. Systems and organisations set up to control migration and protect borders are all vulnerable to corruption to varying degrees. It is therefore critical that measures to address the corrupt behaviour that supports and facilitates refugeesmuggling are prioritised.

The issue of human smuggling is at the top of the EU's agenda for the coming years. The EU seeks to promote pro-active financial investigations to seize and recover criminal assets and take action against money laundering by stepping up cooperation with FIUs and other relevant networks on financial flows in the areas of human smuggling.¹¹

How the international community can act together

Leading international organisations such as the OECD, with expertise in transnational corruption and fighting economic crime, should act together with national authorities to cut the lifeline of refugee smuggling – the complex network of illicit payments and financial flows that fund the criminal activity.

In order to effectively combat refugee smuggling, the international community must:

- Identify the corruption vulnerabilities in source, transit and destination countries that give rise to refugee smuggling;
- Identify and analyse the corrupt schemes and methodologies employed by smugglers;
- Analyse laws relating to refugees and asylum-seekers in source, transit and destination countries with an eye to minimise the motivation or ability of smugglers to engage in corrupt schemes;

- Assess institutional arrangements that may be vulnerable to corruption or manipulation by criminal elements in source, transit and destination countries and provide support through knowledge-sharing, technical assistance or capacity building;
- Improve co-operation between law enforcement and FIUs to (i) trace illicit financial flows stemming from this crime, and (ii) improve detection of human smuggling by FIUs (including through underlying offences, such as bribery);
- Facilitate international co-operation in the detection and investigation of human smuggling, including by creating a network for competent law enforcement officials;
- Launch an awareness-raising campaign among law enforcement officials and policy makers of the close relationship between corruption and smuggling, in particular the bribery transactions that facilitate human smuggling and support the extensive criminal networks involved;
- Identify ways to facilitate the safe passage of refugees that would not involve corrupt or extralegal measures.

A role for the OECD

Corruption is a key facilitator at all stages in the process of smuggling migrants by air, land or sea and this crime should be attacked both regionally and globally. The OECD is the leader in the fight against bribery of foreign public officials and has at its disposal a large network of law enforcement officials specialised in combating transnational crime. It has analysed many of the most common bribery schemes currently in play, such as the use of intermediaries (including related legal persons), third parties, and shell companies, and has expertise on the identification and quantification of bribes.

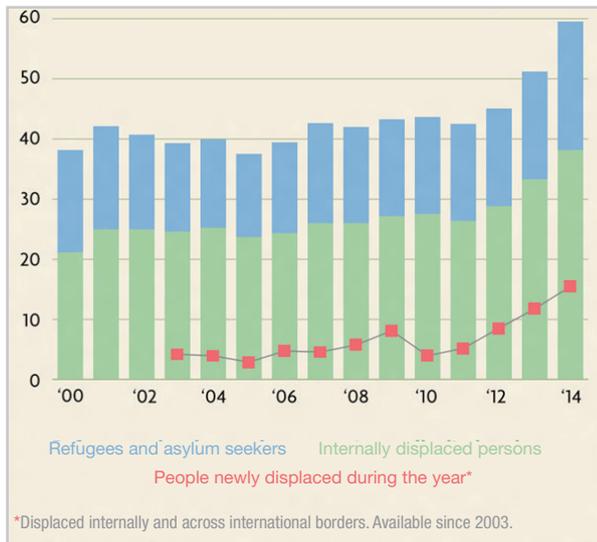
Based on over 15 years of experience in advising on national policies to detect, investigate and prosecute foreign bribery, the OECD offers an international platform for dialogue and action on combating corruption in the context of the smuggling of refugees.

¹⁰ The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organised Crime, was adopted by the United Nations General Assembly in 2000.

¹¹ See note 4.

Annex. Global displacement is rising

Figure 1. Displacement in the 21st century, 2000-2014 (millions)

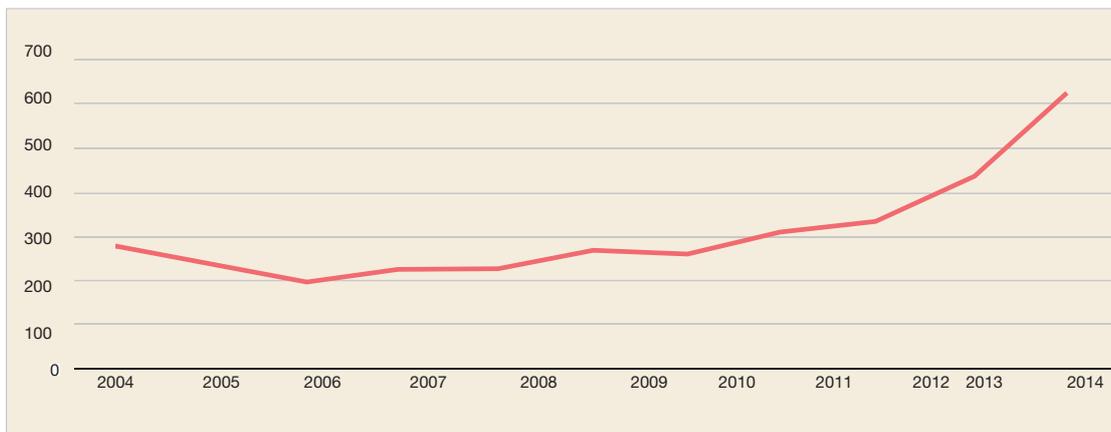


Source: UNHCR Global Trends, Forced Displacement in 2014

The United Nations High Commissioner for Refugees (UN-HCR) estimated that 13.9 million individuals were newly displaced due to conflict or persecution in 2014. This includes 11.0 million persons newly displaced within the borders of their own country, the highest figure on record. The other 2.9 million individuals were new refugees.¹² This translates to 42,500 individuals leaving their homes per day due to conflict and persecution, a four-fold increase from 2010. In 2013, 32,200 people were displaced on average per day, 23,400 in 2012, 14,200 in 2011, and 10,900 in 2010.¹³ At present, a total of 59.5 million people have been forcibly displaced worldwide.

The UNHCR reported an increase in displaced populations in every region in the world. Worldwide, the five countries hosting the largest refugee populations are Turkey (1.59 million refugees), Pakistan (1.51 million), Lebanon (1.15 million), Iran (982,000) and Ethiopia (659,500). In 2015, Europe will record an unprecedented number of asylum seekers and refugees with up to one million asylum applications.¹⁴ Forced displacement numbers in Europe totaled 6.7 million at the end of the year, compared to 4.4 million at the end of 2013.¹⁵ As wars and conflicts continue and sometimes worsen, the global refugee crisis is likely to deepen.

Figure 2. Asylum seekers in Europe, 2004-2014 (thousands)*



*2004-07, EU-27 and extra-EU-27

Source: Eurostat (online data codes: migr_asyappctza and migr_asyctz)

¹² UNHCR Global Trends, Forced Displacement in 2014.

¹³ See *id.*

¹⁴ OECD Migration Policy Debates, No. 7, September 2015.

¹⁵ See note 7.

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